

3 FAM 1520

NON-DISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, OR RELIGION

*(CT:PER-631; 12-14-2010)
(Office of Origin: S/OCR)*

3 FAM 1521 POLICY

*(CT:PER-567; 09-22-2005)
(State)
(Foreign Service and Civil Service Employees)*

In accordance with Title VII of the Civil Rights Act of 1964 (Title VII), the Department of State prohibits discrimination in employment on the basis of race, color, national origin, sex, or religion, and ensures that all personnel actions affecting employees or applicants for employment are free from discrimination on such bases.

3 FAM 1522 AUTHORITY

*(CT:PER-567; 09-22-2005)
(State)
(Foreign Service and Civil Service Employees)*

- a. Title VII of the Civil Rights Act of 1964, as amended (Title VII) (42 U.S.C. 2000e et seq.);
- b. The Foreign Service Act of 1980, as amended (22 U.S.C. 3901, et seq.); and
- c. Equal Employment Opportunity Commission (EEOC) regulations contained in 29 CFR 1614.

3 FAM 1523 APPLICABILITY

(CT:PER-567; 09-22-2005)

(State)

(Foreign Service and Civil Service Employees)

The regulations in 3 FAM 1500 and 3 FAH-1 H-1500 apply to all U.S. citizen Foreign Service (FS) and Civil Service (CS) employees and employment applicants of the Department of State, not including non-U.S. citizens located outside the territorial boundaries of the United States.

3 FAM 1524 PROCEDURES AND GUIDELINES GOVERNING ALLEGATIONS OF DISCRIMINATION BASED ON RACE, COLOR, NATIONAL ORIGIN, SEX AND/OR RELIGION

(CT:PER-567; 09-22-2005)

(State)

(Foreign Service and Civil Service Employees)

- a. Procedures on the filing and processing of complaints of discrimination under the authorities contained in this chapter are published in 3 FAH-1 H-1510.
- b. In addition to these procedures, employees are also entitled to use the procedures enumerated in 3 FAM 1525.2-2, paragraph d, Employee's Rights and Responsibilities.

3 FAM 1525 ANTI-SEXUAL HARASSMENT POLICY

(CT:PER-567; 09-22-2005)

(State)

(Foreign Service and Civil Service Employees)

- a. The Department of State is committed to providing a workplace that is free from sexual harassment. Sexual harassment in the workplace is against the law and will not be tolerated. When the Department determines that an allegation of sexual harassment is credible, it will take prompt and appropriate corrective action.

b. All Department employees, including but not limited to staff, supervisors, and senior officials, are required to comply with this policy. Employees are expected to behave professionally and to exercise good judgment in work-related relationships, whether with fellow employees, business colleagues, or members of the public with whom they come in contact in the course of official duties. Further, all employees are expected to take appropriate measures to prevent sexual harassment. Unwelcome behavior of a sexual nature should be stopped before it becomes severe or pervasive and rises to a violation of law.

3 FAM 1525.1 What Is Sexual Harassment?

(CT:PER-567; 09-22-2005)

(State)

(Foreign Service and Civil Service Employees)

a. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- (1) An employment decision affecting that individual is made because the individual submitted to or rejected the unwelcome conduct; or
- (2) The unwelcome conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or abusive work environment.

b. Certain behaviors, such as conditioning promotions, awards, training, or other job benefits upon acceptance of unwelcome actions of a sexual nature, are always wrong.

c. Unwelcome actions such as the following are inappropriate and, depending on the circumstances, may in and of themselves meet the definition of sexual harassment or contribute to a hostile work environment:

- (1) Sexual pranks, or repeated sexual teasing, jokes, or innuendo, in person or via e-mail;
- (2) Verbal abuse of a sexual nature;
- (3) Touching or grabbing of a sexual nature;
- (4) Repeatedly standing too close to or brushing up against a person;
- (5) Repeatedly asking a person to socialize during off-duty hours when

the person has said no or has indicated he or she is not interested (supervisors in particular should be careful not to pressure their employees to socialize);

- (6) Giving gifts or leaving objects that are sexually suggestive;
- (7) Repeatedly making sexually suggestive gestures;
- (8) Making or posting sexually demeaning or offensive pictures, cartoons, or other materials in the workplace; and
- (9) Off-duty, unwelcome conduct of a sexual nature that affects the work environment.

d. A victim of sexual harassment can be a man or a woman. The victim can be of the same sex as the harasser. The harasser can be a supervisor, co-worker, other Department employee, or a nonemployee who has a business relationship with the Department.

3 FAM 1525.2 Responsibilities and/or Rights

3 FAM 1525.2-1 The Department's Responsibilities

(CT:PER-631; 12-14-2010)

(State)

(Foreign Service and Civil Service Employees)

- a. If the Department receives an allegation of sexual harassment, or has reason to believe sexual harassment is occurring, it will take the necessary steps to ensure that the matter is promptly investigated and addressed. If the allegation is determined to be credible, the Department will take immediate and effective measures to end the unwelcome behavior. The Department is committed to taking action if it learns of possible sexual harassment, even if the individual does not wish to file a formal complaint.
- b. The Office of Civil Rights (S/OCR) is the main contact point for questions or concerns about sexual harassment. S/OCR has responsibility for investigating or overseeing investigations of alleged sexual harassment. S/OCR is committed to ensuring that all investigations of sexual harassment are conducted in a prompt, thorough, and impartial manner.
- c. Supervisors and other responsible Department officials who observe, are informed of, or reasonably suspect incidents of possible sexual harassment must immediately report such incidents to S/OCR, which will either initiate or oversee a prompt investigation. Failure to report such

incidents to S/OCR will be considered a violation of this policy and may result in disciplinary action. S/OCR will provide guidance as needed on investigating and handling the potential harassment. Supervisors should take effective measures to ensure no further apparent or alleged harassment *occurs* pending completion of an investigation.

- d. The Department will seek to protect the identities of the alleged victim and harasser, except as reasonably necessary (for example, to complete an investigation successfully). The Department will also take the necessary steps to protect from retaliation those employees who in good faith report incidents of potential sexual harassment. It is a violation of both Federal law and this policy to retaliate against someone who has reported possible sexual harassment. Violators may be subject to discipline.
- e. Employees who have been found by the Department to have subjected another employee to unwelcome conduct of a sexual nature, whether such behavior meets the legal definition of sexual harassment or not, will be subject to discipline or other appropriate management action. Discipline will be appropriate to the circumstances, ranging from a letter of reprimand through suspensions without pay of varying lengths to separation for cause. A verbal or written admonishment, while not considered formal discipline, may also be considered.

3 FAM 1525.2-2 Employee's Rights and Responsibilities

(CT:PER-631; 12-14-2010)

(State)

(Foreign Service and Civil Service Employees)

- a. Any employee who believes he or she has been the target of sexual harassment is encouraged to inform the offending person orally or in writing that such conduct is unwelcome and offensive and must stop.
- b. If the employee does not wish to communicate directly with the offending person, or if such communication has been ineffective, the employee has multiple avenues for reporting allegations of sexual harassment and/or pursuing resolution.
- c. Employees are encouraged to report the unwelcome conduct as soon as possible to a responsible Department official. It is usually most effective—although it is not required—that the official be within the employee's supervisory chain. Responsible Department officials include first- or second-line supervisors, the offending person's supervisor, the post's management officer, the bureau's executive director, or the Office of Civil Rights (S/OCR).

- d. In addition to reporting sexual harassment concerns to a responsible Department official, employees who believe they have been subjected to sexual harassment may elect to pursue resolution in several ways, including:
 - (1) **Mediation:** Mediation is an informal way to resolve office problems using a trained mediator who facilitates communication between the parties to the dispute. If an employee chooses to attempt resolution through mediation, management is obligated by Department policy to send a representative to the table. If a resolution is not reached, the parties may continue to pursue their rights in any other appropriate forum. Employees may ask for the assistance of a mediator by contacting S/OCR;
 - (2) **Grievances:** Civil servants who are not covered by a negotiated grievance procedure cannot bring grievances on EEO matters. Civil Service employees who are covered by a negotiated grievance procedure may only file a grievance alleging sexual harassment or other EEO matters if permitted by the governing collective bargaining agreement. Members of the Foreign Service may file grievances on EEO matters; however, pursuant to 3 FAM 4428, they must elect to file either a grievance or a formal EEO complaint. If a Foreign Service employee elects to file a grievance, the Grievance Staff (HR/G) will investigate the allegations and recommend a resolution to the Deputy Assistant Secretary responsible for rendering the agency decision on grievances. The employee may appeal to the Foreign Service Grievance Board;
 - (3) **EEO processes:** All employees working in the United States and U.S. citizens working for the Department *abroad* can file an Equal Employment Opportunity (EEO) complaint with the Department. An employee who wishes to file a complaint under EEO procedures **must** consult an EEO counselor within 45 days of the alleged incident. A list of EEO counselors is available on S/OCR's Web site. It is not necessary for an employee to complain to his *or* her supervisor before approaching an EEO counselor, nor to attempt informal resolution through mediation or other means. (**NOTE:** Some contractors cannot, by law, bring EEO complaints against the Department; contractors may contact S/OCR for guidance); *and*
 - (4) **Processes for Foreign Service nationals (FSNs):** Issues raised by FSNs are handled at post consistent with post-established procedures for FSN discrimination complaints and guidance available on the S/OCR Web site. FSNs with questions about post procedures should contact the post's senior management officer and/or designated EEO counselor. FSNs may also contact S/OCR

for guidance.

- e. More information about the resolution and complaint processes is available on the S/OCR's Web site.

3 FAM 1526 DISCRIMINATORY HARASSMENT POLICY

(CT:PER-631; 12-14-2010)

(State)

(Foreign Service and Civil Service Employees)

- a. The Department of State is committed to providing a workplace that is free from discriminatory harassment. Employees must not harass anyone because of race, color, gender, national origin, religion, physical or mental disability, sexual orientation, or because the person is 40 years old or older. Employees also must not harass someone for opposing discrimination or for participating in the discrimination complaint process.
- b. Sexual harassment is addressed separately in 3 FAM 1525, *Anti-Sexual Harassment Policy*.
- c. All Department employees, including but not limited to staff, supervisors, and senior officials, must comply with this policy. All employees are also expected to take appropriate measures to prevent discriminatory harassment. Employees who believe they are being harassed for one of the reasons listed above or who witness potential harassment are encouraged to report the offending conduct so that it can be stopped before it becomes severe or pervasive and rises to a possible violation of law.

3 FAM 1526.1 What Is Discriminatory Harassment?

(CT:PER-567; 09-22-2005)

(State)

(Foreign Service and Civil Service Employees)

- a. Discriminatory harassment is verbal or physical conduct that denigrates or shows hostility toward an individual because of his or her race, color, gender, national origin, religion, age (40 or over), physical or mental disability, sexual orientation, or because of his or her opposition to discrimination or his or her participation in the discrimination complaint process. In general, harassment is against the law when it creates an intimidating, hostile, or offensive working environment, or when it

interferes with an individual's work performance.

- b. Some examples of conduct that might constitute harassment include:
 - (1) Racial epithets, "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race/color;
 - (2) Ethnic slurs, workplace graffiti, or other offensive conduct directed towards an individual's birthplace, ethnicity, culture, or foreign accent;
 - (3) Verbal or physical abuse, "jokes," or offensive comments based on an individual's age, gender, disability, or sexual orientation; and
 - (4) Making, posting, e-mailing, or circulating demeaning or offensive pictures, cartoons, or other materials in the workplace that relate to race, ethnic origin, gender, or one of the other protected categories listed above, or using U.S. Government equipment to circulate such materials.
- c. The harasser can be a supervisor, co-worker, other Department employee, or a nonemployee who has a business relationship with the Department.

3 FAM 1526.2 The Department's Responsibilities Under This Policy

(CT:PER-631; 12-14-2010)

(State)

(Foreign Service and Civil Service Employees)

- a. If the Department receives an allegation of discriminatory harassment, or has reason to believe such harassment is occurring, it will take the steps necessary to ensure that the matter is promptly investigated and addressed. If the allegation is determined to be credible, the Department will take immediate and effective measures to end the unwelcome behavior. The Department is committed to taking action if it learns of possible discriminatory harassment, even if the individual does not wish to file a formal complaint.
- b. The Office of Civil Rights (S/OCR) is the main contact point for questions or concerns about discriminatory harassment. S/OCR is responsible for investigating or overseeing investigations of alleged discriminatory harassment. S/OCR is committed to ensuring that all investigations are conducted in a prompt, thorough, and impartial manner.

- c. Supervisors and other responsible Department officials who observe, are informed of, or reasonably suspect incidents of possible discriminatory harassment must immediately report such incidents to S/OCR, which will either initiate or oversee a prompt investigation. Failure to report such incidents to S/OCR will be considered a violation of this policy and may result in disciplinary action.
- d. S/OCR will provide guidance as needed on investigating and handling the potential harassment. Supervisors should take effective measures to ensure no further apparent or alleged harassment *occurs* pending completion of an investigation.
- e. The Department will seek to protect the identities of the alleged victim and harasser, except as reasonably necessary (for example, to complete an investigation successfully). The Department will also take the necessary steps to protect from retaliation those employees who in good faith report incidents of potential discriminatory harassment. It is a violation of both Federal law and this policy to retaliate against someone who has reported unlawful harassment. Violators may be subject to discipline.
- f. Employees who have been found by the Department to have discriminatorily harassed others may be subject to discipline or other appropriate management action. Discipline will be appropriate to the circumstances, ranging from a letter of reprimand to suspensions without pay to separation for cause. A verbal or written admonishment, while not considered formal discipline, may also be considered.

3 FAM 1526.3 Employee's Rights and Responsibilities Under This Policy

(CT:PER-631; 12-14-2010)

(State)

(Foreign Service and Civil Service Employees)

- a. Any employee who believes he or she has been the target of discriminatory harassment is encouraged to inform the offending person orally or in writing that such conduct is unwelcome and offensive and must stop.
- b. If the employee does not wish to communicate directly with the offending person, or if such communication has been ineffective, the employee has multiple avenues for reporting allegations of discriminatory harassment and/or pursuing resolution.

- c. Employees are encouraged to report the unwelcome conduct as soon as possible to a responsible Department official. It is usually most effective, although it is not required, that the official be within the employee's supervisory chain. Responsible Department officials include first- or second-line supervisors, the offending person's supervisor, the post's management officers, the bureau's executive director, and the Office of Civil Rights (S/OCR).
- d. In addition to reporting harassment concerns to a responsible Department official, employees who believe they have been subjected to discriminatory harassment may choose to pursue resolution in several other ways, including:
 - (1) **Mediation:** Mediation is an informal way to resolve office problems using a trained mediator who facilitates communication between the parties to the dispute. If an employee chooses to attempt resolution through mediation, management is obligated by Department policy to send a representative to the table. If a resolution is not reached, the parties may continue to pursue their rights in any other appropriate forum. Employees may ask for the assistance of a mediator by contacting S/OCR;
 - (2) **Grievances:** Civil Service employees who are covered by a negotiated grievance procedure may have the option to file a grievance alleging discriminatory harassment if permitted by the governing collective bargaining agreement. Civil servants who are not covered by a negotiated grievance procedure generally may not bring grievances alleging discriminatory harassment. Members of the Foreign Service may file grievances on EEO matters; however, pursuant to 3 FAM 4428, they must elect to file either a grievance or a formal EEO complaint. If a Foreign Service employee elects to file a grievance, the Grievance Staff (HR/G) will investigate the allegations and recommend a resolution to the deputy assistant secretary responsible for rendering the agency decision on grievances. The employee may appeal to the Foreign Service Grievance Board;
 - (3) **EEO processes:** All U.S. citizen employees or U.S. citizen applicants for employment may file an Equal Employment Opportunity (EEO) complaint with the Department. Individuals who wish to file an EEO complaint **must** consult a Department of State EEO counselor within 45 days of the most recent harassing incident. A list of EEO counselors is available on S/OCR's Web site at socr.state.gov. It is recommended, but it is **not** necessary, for an employee to complain to his *or* her supervisor or other responsible official before approaching an EEO counselor. (**NOTE:** Personal

services contractors and third-party contractors may not, depending on the circumstances, be able to pursue an EEO claim against the Department; they may contact S/OCR for guidance);

- (4) **Processes for Foreign Service nationals (FSNs):** Issues raised by FSNs are handled according to complaint processing procedures established at post and guidance available on the S/OCR Web site. FSNs with questions about post procedures should contact the post's senior management officer and/or designated EEO counselor. FSNs may also contact S/OCR for guidance; and
- (5) **Complaints of discrimination or harassment based on sexual orientation:** The Department has prohibited sexual orientation discrimination as a matter of policy and has established a comprehensive complaints process for such situations, even though such discrimination is not prohibited in the Federal workplace as a matter of law. The process is explained in 3 FAH-1 H-1520. Alternatively, Foreign Service employees may also raise claims of sexual orientation discrimination in the Foreign Service grievance process. That process is explained in 3 FAM 4400. Civil Service employees may also be able to use a negotiated grievance procedure, or appeal to the Merit Systems Protection Board or the Office of Special Counsel.

3 FAM 1527 POLICY ON CONSENSUAL RELATIONSHIPS

(CT:PER-631; 12-14-2010)

(State)

(Foreign Service and Civil Service Employees)

- a. This policy sets out Department guidance on consensual relationships between supervisors and subordinates within the same supervisory chain.
- b. Consensual relationships are dating or sexual relationships willingly undertaken by the parties. This definition applies to all such relationships, regardless of the genders of those involved.
- c. The Department of State is committed to a workplace free from conflicts of interest, favoritism, and the potential for sexual harassment.
- d. Consensual relationships between supervisors and subordinates within a direct supervisory chain have the potential for creating harm. Such relationships may create the appearance of impropriety, call into question a supervisor's objectivity, result in actual or perceived preferential

treatment, or affect office morale and efficiency. In some cases, such relationships may lead to allegations of sexual harassment.

- e. To prevent such harms, Department policy prohibits employees from directly supervising or evaluating an employee with whom they are having a consensual relationship.
- f. When employees are engaged in a consensual relationship in which one employee serves as the first- or second-line supervisor of the other, both employees are responsible for initiating arrangements to address potential conflicts of interest. This requires employees to contact the principal deputy assistant secretary (PDAS) or PDAS-equivalent of the bureau in which the employees' office is located, or, at a post *abroad*, the deputy chief of mission (DCM). Domestic employees at locations outside of Main State, such as regional passport offices, should contact the highest-ranking official at that location.
- g. Any PDAS, DCM, or their regional equivalents who are themselves involved in such a relationship must contact their supervisors. Failure to notify the appropriate official in order to initiate arrangements may result in admonishment or the imposition of discipline.
- h. The employees involved in the relationship and the notified official must then fashion arrangements to avoid potential conflicts of interest. Although appropriate arrangements will vary according to the particular circumstances, at a minimum, the supervisor may no longer rate or review the employee with whom he or she has a relationship.
- i. This policy does not apply to employees who are in different supervisory chains or who are peers in the same chain (i.e., who do not have supervisory responsibilities over one another). Nonconsensual relationships are covered under the Department's policy on sexual harassment.
- j. Nothing in this policy contravenes other relevant regulations such as standards for appointment and continued employment (see 3 FAM *4130*); and standards of ethical conduct for employees of the executive branch (see 5 CFR Part 2635), including the prohibition on use of public office for private gain (see 5 CFR 2635.702), and the requirement for impartiality in performing official duties (see 5 CFR 2635.501 and 2635.502).
- k. Questions regarding this policy or regarding options available for resolving issues arising under this policy should be referred in the first instance to the Bureau of Human Resources, Office of Employee Relations (HR/ER). Allegations of sexual harassment should be referred to the Office of Civil Rights (S/OCR).

3 FAM 1528 AND 1529 UNASSIGNED